

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

CRL.A.No. 1082 of 2001()

CC.1329/1998 of JUDL.MAGISTRATE OF FIRST CLASS, KARUNAGAPPALLY
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APPELLANT/COMPLAINANT:

JOHNSON,
PANTAKASALA PUTHEN VEEDU,
KOLLAKE, KARUNAGAPPALLY.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENT/ACCUSED:

PREMJITH, S/O. JAYADHARAN,
MEENATHERIL VEEDU, VELLANATHURUTHU,
KARUNAGAPPALLY.

BY ADV. SRI.J.OM PRAKASH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO.1082 OF 2001

Dated this the 16th day of August, 2007

JUDGMENT

This appeal is filed against the judgment in C.C. No.1329 of 1998 on the file of the Judicial First Class Magistrate's Court Karunagappallay. The complainant in the above Calendar Case is the appellant.

2. The case of the complainant was that the accused - respondent herein borrowed from him an amount of Rs.1,00,000/- and issued Ext.P1 cheque towards discharge of the above liability which when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the accused. Since the amount covered by the cheque was not repaid inspite of issuance of notice prescribed under the statute, the appellant filed the complaint. To prove the case against the accused - respondent, the complainant himself was examined as PW.1 and the Manager of the Bank was examined as PW.2 and Exts.P1 to P6 were produced. On the side of the defence, DWs.1 and 2 were examined and Exts.D1 to D3 were produced. After closing the evidence of the

complainant, the accused was questioned under Section 313 Cr.P.C. He denied the allegations levelled against him. After considering the entire evidence, the trial court acquitted the accused on the ground that the complainant failed to file the complaint within one month from the date of acceptance of the notice by the accused. To come to this conclusion, the trial court relied on Ext.D1 notice which showed that the cheque in question was already dishonoured and hence the second notice issued against the accused - respondent was not within the purview of Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act").

3. Heard the learned counsel appearing on either side and perused the records made available before this Court.

4. The contention of the learned counsel appearing for the appellant is that the evidence of PW.2, the Manager of the Bank and Ext.P6 register maintained by the bank would show that the cheque in question was presented only once, and that was on 18.4.1998. If so, the cause of action for the appellant to file the complaint arises only after 18.4.1998, on getting information from the bank regarding the dishonour of the cheque.

5. Learned counsel appearing for the respondent relying on the decision of the Apex Court reported in **Sadanandan Bhadran v. Madhavan Sunil Kumar, 1998 (2) K.L.T. 765 (SC)** and the decision of this Court reported in **Lakshmanan v. Sivarama Krishnan, 1995(1) K.L.T. 259** contends that as per Ext.D1 notice, the cause of action for the appellant to file the complaint against the respondent arises on 23.2.1998 as Ext.D1 notice is dated 23.2.1998.

6. The short question to be decided in this appeal is whether the cause of action for the appellant to file the complaint against the respondent arises on 23.2.1998, or on 27.4.1998, the date on which Ext.P3 notice was issued.

7. Clause (b) of the proviso to Section 138 of the Act reads as follows:

"(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

A reading of the above clause would show that a payee or the holder in due course of a cheque shall make a demand for the payment of the amount covered by the cheque by issuing a notice in writing to the drawer of the cheque within 15 days of receipt of information from the bank regarding the return of the cheque as unpaid. In this context, learned counsel appearing for the appellant relies on the decision of the Apex Court reported in **Uniplas India Ltd. v. Government of NCT of Delhi, 2001(3) K.L.T. 45 (SC)** and submits that even if a notice has been issued earlier, the cause of action would arise only after getting information from the bank.

8. The cheque in question was dated 15.2.1998. As per the evidence of PW.2 and Ext.P6 document, it is proved that Ext.P1 cheque was presented to the bank for collection only on 18.4.1998. Ext.P6 register maintained by the bank for receipt and return of cheques would show that the cheque in question was presented only once. That being so, the cause of action for the appellant to send notice or to file the complaint would arise only after receipt of information regarding dishonour of the cheque. The bank should give the information, based on the account maintained in the name of the drawer of the check, as to whether the

cheque was returned unpaid by the bank either because the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank. This is clear from the wordings of Section 138 of the Act. Dishonour of the cheque or non-payment of the amount covered by a cheque shall be informed by the bank to the payee or the holder in due course of the cheque and that information shall be based on the account standing in the name of the drawer. In other words the information should not be an oral one collected by the complainant. In the light of the above reasoning, this Court is of the view that the judgment of the trial court is not legally sustainable. Accordingly, the impugned judgment is set aside and the matter is remanded to the trial court for fresh disposal. The parties are allowed to adduce additional evidence, if any.

The Crl. Appeal is allowed by way of remand. The parties shall appear before the trial court on 6.10.2007.

(K.THANKAPPAN, JUDGE)

sp/

C.R.

K.THANKAPPAN, J.

CRL.A. NO.1082/2001

JUDGMENT

16TH AUGUST, 2007.